

REMARKS

Claim 16 has been amended to correct minor grammatical errors. No new matter has been added.

Claims 17-27 have been cancelled, without prejudice.

Claims 1 and 10 have been amended to more particularly point out and distinctly claim subject matter regarded as the invention. No new matter has been added.

New claims 28-38 also particularly point out and distinctly claim subject matter regarded as the invention.

Election/Restriction

Claims 17-27 have been withdrawn from consideration as being directed to a non-elected invention. Accordingly, claims 17-27 have been cancelled. New claims 28-38 have been added which are directed to an invention that is not independent or distinct from the invention originally claimed.

The 35 U.S.C. § 103 Rejection

Claims 1-4, 6, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hirviniemi¹ in view of Richards². Claims 10-13 and 15 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hirviniemi and Richards in further view

¹ U.S. Patent No. 5,802,285

² U.S. Patent No. 4,853,954

of applicant admitted prior art. Claims 5, 7, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hirviniemi and Richards in further view of Bhatia et al³.

These rejections are respectfully traversed.

According to the Manual of Patent Examining Procedure (M.P.E.P.),

To establish a prima facie case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.⁴

Specifically, the Office Action contends that the elements of the presently claimed invention are disclosed in Hirviniemi, except that Hirviniemi does not teach that the emulation means is that of an "always connected" type.⁵ The Office Action further contends that Richards teaches means for emulation of an "always connected" type I/O device driver even though the communications are transmitted over a "connection establishment" type network and that it would be obvious to one having ordinary skill in the art at the time of the invention that incorporating Richards' modem with the protocol in Hirviniemi would have created a system which provides a transparent network connection in order to allow user applications to continue processing without waiting to be established. The Applicant respectfully disagrees for the reasons set forth below.

To the extent there is motivation to combine the references (applicant is not admitting there is), applicant respectfully submits that it would not create a system which provides a

³ U.S. Patent No. 6,028,848

⁴ M.P.E.P § 2143.

⁵ Office Action, page 5, paragraph 5.

transparent network connection in order to allow user applications to continue without processing. If anything, it would only create a system which provides a transparent network connection in order to allow host applications to continue when the user is offline.

Richards teaches a modem capable of direct connection to a communication Host associated with a mainframe computer "so that the *Host* believes a valid terminal is continuously connected regardless of whether the modem is online or offline" (see Abstract, emphasis added). The invention in Richards is directly connected to a bysync Host (see col. 1, lines 59-65). For discussion purposes, this may be termed the "Host side" of the connection. The modem is not, by contrast, located on the "user side" of the connection. As such, when the modem is offline (not in communication with the user modem), the user is simply not connected to the network at all. Richards deals with the problem of how to fool the host computer into thinking that the user is still connected. It does this by replying to the various polls (now more commonly called "pings") sent by the host computer. There is no teaching or suggestion to attempt to reply to communications from the user terminal with any sort of emulation. In fact, it would be impossible for the invention in Richards to do so because when the modem is offline, the user terminal *cannot* communicate at all with the modem.

The present invention, on the other hand, can be thought of as being on the "user side" of the connection. While precise location is not relevant to the claims as drafted (as in the wireless world, physical location is somewhat meaningless), the present invention emulates the operation of an "always connected" type I/O device driver *to the application software on the remote computer system*. Claims 1 and 10 have been amended to make this distinction more clear. The

preamble of claim 1 as amended indicates that "said remote computer system having application software for facilitating 'always connected' type communications." Claim 1 then further describes "means for emulating the operation of an 'always connected' type I/O device driver *to said application software*" (emphasis added). It is clear that neither Hirviniemi nor Richards nor their combination teaches this type of emulation to fool the application software on the remote computer system.

Additionally, the solution in Richards is quite simplistic and is not particularly relevant. Providing a generic way to respond to a ping command despite the recipient of the ping command is not emulation in the traditional sense. It merely fools the host computer into thinking that the user computer is still connected. This may be quite different from fooling the computers into thinking that they are both communicating over an "always connected" type network. As described in the background of the present invention, "always connected" type networks often have different protocol commands than "connection establishment" type networks. There is no discussion in Richards as to how to deal with these different protocol commands.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Dependent Claims

Claims 2-16 are dependent claims. Therefore, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Request for Allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,

THELEN REID & PRIEST LLP

Dated: _____

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